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07 April 2008

### Version of attached file:

Published Version

### Peer-review status of attached file:

Unknown

### Citation for published item:

Chang, M-L. (2008) 'State sovereignty as social construct : a case study of Kosovo's pursuit of independence.', Working Paper. Durham University, School of Government and International Affairs, Durham.

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SGIA Research Working Papers Series

**State Sovereignty as Social Construct:  
A case study of Kosovo's pursuit of independence**

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February 2008

SGIARWPO8-1



# **State Sovereignty as Social Construct:**

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## **State Sovereignty as Social Construct: A case study of Kosovo's pursuit of independence**

### **Introduction**

Kosovo, a province with its capital in Pristina within Serbia, was placed under UN administration after the Kosovo War in 1999 and still struggles for full independence negotiating about its final status with Serbia, whose administrative capital is in Belgrade. A decision on the future of the province was set for 10 December 2007 but, since a UN negotiating team could not bring Pristina and Belgrade to a consensus, the status of Kosovo remains unresolved.<sup>1</sup> However, the US and its European allies are widely expected to support a unilateral declaration of independence from Serbia by the Kosovar leadership after 10 December even in the absence of a new UN resolution or a diplomatic breakthrough by the troika.<sup>2</sup> On the other hand, Russia, a key ally of Serbia, is in a position of ongoing support for Serbia. Russian Ambassador to London, Yury Fedotov, has commented that the negotiation process between Belgrade and Pristina should continue until a settlement is reached without any artificial deadlines imposed, and warned that the outcome of an independent Kosovo would not only violate the principle of territorial integrity but also the legitimacy of international law and the authority of the international system.<sup>3</sup> This leads us to address renewed questions about the location of state sovereignty in international relations. The concept of sovereignty tends to be viewed as a static, fixed concept and an absolute principle.<sup>4</sup> However, the constructivist school of thought, which emerged in international relations theory in the aftermath of the Cold War, asserted that state sovereignty is socially constructed, as is the modern state system.<sup>5</sup>

This paper will explore state sovereignty as a social construct and look at the case of Kosovo's pursuit of independence. First, it will look at the fundamental nature of sovereignty and its changing content across time and space. The fundamental norm of Westphalian sovereignty stresses the principle of non-intervention. The principle of self-determination became the new rule of the sovereignty game after 1945 and is renewed by recent ethnic groups' claims for sovereignty. Meanwhile, the creation of the UN international system has established new international order. In the post-Cold War period, humanitarian intervention emerged from state failure to assure the meeting of humanitarian concerns and international peace and security. Nowadays, human rights regimes are becoming a universal norm and constitute the legitimate source of sovereignty. Next, this paper will explore the concept of state sovereignty as social construct and its diversity in different historical contexts. Constructivism emphasizes normative and ideational structures in shaping the social identity of the agent, and agent and structure are mutually constituted. Sovereignty as an institutionalized norm is constructed by all independent states and shapes the identity of the state as 'sovereign'. However, this paper will argue that although normative structures shape political behavior, the meaning of norms and practices changes when ideas change; and state practices of great powers dominate the ideational structures. As state sovereignty assures non-intervention and political entity as having equal status in the international system, Kosovar Albanians seek to be sovereign actors to guarantee their security. To be recognized, a state should meet the criteria for a state and be recognized by the international community.

Therefore, the international community will play an important role in Kosovo's road to independence. In the case study, we will examine the four important aspects of state sovereignty: authority, territory, population and recognition in Kosovo and their implications in the process of constructing Kosovo's independence. Finally, it will discuss the possibility of the future status of Kosovo based on the new notion and state practice of the sovereignty game. The negotiations about the future of Kosovo's status will reflect how states' practices and the international community respond to ethnic sovereignty.

### **The Changing Nature of State Sovereignty**

After the Thirty Years' War, the Peace of Westphalia in 1648 developed the modern system of sovereign states and established a new 'international' legal order for European states.<sup>6</sup> The fundamental norm of Westphalian sovereignty is "political organization based on the exclusion of external actors from authority structures within a given territory".<sup>7</sup> Therefore, Brian Hehir observed that "in the Westphalian order both state sovereignty and the rule of non-intervention are treated as absolute norms".<sup>8</sup> Traditional understanding of sovereignty is 'supreme authority within a territory' – the legitimate authority over territory and population.<sup>9</sup> F. H. Hinsley defined sovereignty as when "there is a final and absolute political authority in a political community" and "no final and absolute authority exists elsewhere".<sup>10</sup> Furthermore, it might be understood in two dimensions: internal and external. Internal sovereignty refers to the right and the ability of a state's government to exercise control over domestic affairs within a given territory without outside interference, and hence this type of sovereignty is also called 'empirical' sovereignty<sup>11</sup> or in Stephen D. Krasner's definition, 'domestic sovereignty'<sup>12</sup>; external sovereignty refers to a state's legal identity in international law and equal status with all other states which stresses inviolation of territorial integrity and the state's political independence from outside authorities, being free to conduct foreign relations and hence this type of sovereignty is also called 'juridical' sovereignty<sup>13</sup> or 'international legal sovereignty'<sup>14</sup>. States have remained the chief holder of external sovereignty since the system of sovereign states<sup>15</sup> and are considered as the dominant actor in international relations. Thus, the state is regarded as "a legal person or citizen of international society"<sup>16</sup> only when it acquires sovereignty and is recognized internationally by other equal entities. For that reason, sovereignty is portrayed as "a ticket of general admission to the international arena"<sup>17</sup> allowing the state to enter into international agreements and diplomacy and to obey and respect universal norms and rules.

After the Second World War, the principle of 'self-determination' emerged as the new sovereignty game.<sup>18</sup> The notion of self-determination, namely the popular sovereignty, could be generally interpreted as the right of individuals and people to choose their own fate and conditions of life, and determine their future. It has two dimensions: an internal one, revealing that the people – the citizens – are the holder of state sovereignty within the political community, and under this circumstance the political form of government should be based on democratic principles; and an external one, demonstrating that the community is a distinct political entity and interacts with other political entities.<sup>19</sup> The principle of self-determination was first applied at the 1919 Paris Peace Conference according to Fourteen Points by the United States President Woodrow Wilson and employed effectively in the decolonization movement after 1945 as many colonial entities in Africa and Asia acquired sovereignty and were transformed legally into states.

The right of people to self-determination is further introduced into the framework of international law and diplomacy, for instance, enshrined in Articles 1 and 55 of the UN Charter and culminated with the adoption by the 1960 UN's Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly Resolution 1514).<sup>20</sup> Consequently, the system of sovereign states has become the global norm after colonial independence around the 1960s.<sup>21</sup> The UN international system replaced the Westphalian system to ensure "political independence and territorial integrity" and non-intervention was enshrined in the UN Charter and established new international order.<sup>22</sup> Today, there are 192 territorially defined sovereign units in the UN as Member States.<sup>23</sup> Nevertheless, Robert H. Jackson argued that ex-colonies' claims for sovereign statehood have established the 'negative sovereignty' regime.<sup>24</sup> In Jackson's definition, 'negative sovereignty' refers to the right of internal authority to conduct its internal affairs without external interference, it could be understood in a formal-legal condition; while 'positive sovereignty' refers to the capacities of internal authority to act in the world and "provide political goods for its citizens", it is a political rather than a legal status.<sup>25</sup> Many former colonies' governments have been criticized for having inadequate capacity to use their sovereign rights, no positive socioeconomic provision and neglecting the human rights of the local population. This resulted in unstable and illiberal regimes in the newly independent countries and led to the emergence of 'quasi-states' which acquire an internationally guaranteed independence but not 'positive sovereignty'.<sup>26</sup> Thus, the new challenge the colonial independence movement presented was that state sovereignty cannot only be treated as a rule against outside interference; the state should be carried with responsibility to account for providing the basic needs of the people within the territory and ensuring international order.<sup>27</sup>

In the post-Cold War period, interventions and sanctions by the international community have challenged the absoluteness of sovereignty, such as military interventions concerned with humanitarian objectives by the UN, stretching from Iraq to Bosnia, Somalia to Haiti, and Kosovo to East Timor.<sup>28</sup> Intervention is a controversial concept to state sovereignty, as R. J. Vincent defined it:

Activity undertaken by a state, a group within a state, a group of states or an international organization which interferes coercively in the domestic affairs of another state. It is a discrete event having a beginning and an end, and it is aimed at the authority structure of the target state. It is not necessarily lawful or unlawful, but it does break a conventional pattern of international relations.<sup>29</sup>

Moreover, Cynthia Weber stated that "when state practices do not fit supposed intersubjective norms of what a sovereign state must be, then intervention by a sovereign state into the affairs of an 'aberrant' state is deemed to be legitimate by a supposed international community",<sup>30</sup> and hence the interpretation of intervention can change over time as long as the rules of non-intervention change, and rely on a supposed international community for how to interpret these norms.<sup>31</sup>

In contemporary international politics, the development of 'state failure', 'humanitarian intervention' and 'international peace and security maintenance' have been linked to the modern definition of intervention. State failure refers to states being "unable to provide basic social, economic, legal, and political services and safeguards to the populations"; in other words, when a state "no longer performs the functions normally attributed to it" and consequently is, "no longer a source of identity and social meanings".<sup>32</sup> Although for a long time the principle of non-intervention in state sovereignty has been emphasized as the basis for order in the society of states, when state failure occurs and leads to collapse into internal war devastating the basic human rights of a population, it forms the authority boundary between domestic jurisdiction of states over individuals within its territory and international jurisdiction over inalienable human rights, raising the question: which authority is superior?<sup>33</sup> Since sovereign authority in a failed state has collapsed, does it still have the right to exclusive domestic jurisdiction? Furthermore, its international legal sovereignty is questionable since it has been recognized as a 'failed' state. Perhaps this issue enhances the legitimacy of humanitarian intervention. However, despite its humanitarian objectives, humanitarian intervention is considered as a moral imperative promoted by Western democracies; and after all, "sovereign rights still have priority over human rights in international law".<sup>34</sup> For example, The Independent International Commission on Kosovo stated that the North Atlantic Treaty Organization (NATO)'s military intervention in Kosovo was "illegal but legitimate".<sup>35</sup> It is likely to say that this long-standing controversy stems not only from legal and legitimate issues but also, most importantly, from whose right it is to authorize it.<sup>36</sup> Apparently, the debate was because NATO is a trans-Atlantic military organization while the UN Security Council was unable to act because of Russia and China veto authorizing the use of force. Therefore, the argument is not only the tension between non-intervention and universal human rights but also the difference of interpretation between international communities in when, how, and under what conditions that sovereignty is violated and intervention must be taken. On the other hand, the rising ethnic or religious minority groups within a particular geographic area pursuing independence to escape from prejudice or persecution by a majority has challenged the principle between self-determination and territorial integrity in post-Cold War times.<sup>37</sup> The difference between decolonization and ethnic self-determination is that decolonization could accept colonial frontiers as national borders<sup>38</sup> while ethnic groups' claims to sovereign statehood mean that they have to come out of the territory of established states and would bring about significant changes in existing borders.<sup>39</sup> It seems that the right of ethnic minorities to self-determination is not generally promoted in the early twenty-first century since the notion of "people" entitled to self-determination is defined as "persons living in a particular geographic area within a nation-state rather than persons sharing a common culture or language".<sup>40</sup> However, internal wars resulting from ethnic conflicts such as Kurds in Iraq, Chechens in Russia and Kosovar Albanians in Serbia have presented dangers to international security and cause humanitarian crisis.

Nowadays, the protection of human rights is becoming the new agenda related to sovereignty in international politics. The Universal Declaration of Human Rights (UDHR) is the core human rights law adopted by the UN in 1948. Subsequently, the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights entered into force in 1976, and Article 1 states that "All peoples have the right of self-determination. By virtue

of that right they freely determine their political status and freely pursue their economic, social and cultural development”.<sup>41</sup> Kurt Mills demonstrated that “individuals have human rights, which must be upheld by any entity claiming sovereignty” and “the authority of a state is derived from the popular sovereignty of the people”; and hence human rights and popular sovereignty are viewed as constitutive principles of state legitimacy.<sup>42</sup> He further stated that:

Theoretically, states exist for the well-being of their inhabitants. The primary function of states is that of protection. In other words, the state exists to ensure that its citizens are able to live their lives free from the fear that an outside force will interrupt their lives. A reasonable extension of this would be that the inhabitants of a state should also be as free from internal persecution as from external persecution. Thus, the social function of states is to ensure the ability of people to live.<sup>43</sup>

In sum, states are considered as “instruments at the service of their peoples”.<sup>44</sup> The implication of sovereignty is the ability of a sovereign state to protect individual human rights within its territory and human rights has been broadly defined as a feature of the constitution of legitimate sovereignty. Therefore, it suggests that human rights are the base of legitimacy as a new element in the nature of sovereignty.<sup>45</sup> It has been affirmed in the Helsinki Final Act by the Organization for Security and Cooperation in Europe (OSCE) in 1975 and in the Copenhagen criteria for entry into the European Union (EU) in 1993. It is also becoming a significant part of foreign policy discourse, especially in the practice of dominant great powers after the Cold War. On the other hand, it is important to note that human rights and popular sovereignty are based on liberal democracy derived from Western values. It claims that liberal states are more internally and externally stable than illiberal regimes and hardly go to war with one another, which is called ‘democratic peace’. However, it has been challenged by ‘Asian Values’ which argued that Western notions of human rights are seen as another form of cultural imperialism.

### **State Sovereignty as Social Construct**

Following systemic transformation in the aftermath of the Cold War, the constructivist school of thought emerged in international relations theory and asserted that the role of ideas in shaping the international system, and hence international phenomenon is socially constructed and systemic change is transformed by practices. Constructivism emphasizes how norms shape behavior: the impact of normative and ideational structures on actors’ identities, the role of identity in shaping political action, the mutually constitutive relationship between agents and structures, the role of practices in maintaining and transforming those structures, and at the same time, assuming that institutionalized norms and ideas have moral force in a given social context. In sum, constructivists assert that “the social identities of states are thought to be constituted by the normative and ideational structures of international society and those structures are seen as the product of state practices”;<sup>46</sup> furthermore, “if ideas, norms, and practices matter, and if they differ from one social context to another, then history in turn matters”.<sup>47</sup> Thomas J. Biersteker and Cynthia Weber have assumed that “state, as an identity or agent, and sovereignty, as an institution or discourse, are mutually constitutive and constantly undergoing change and transformation. States can be defined in terms of their claims to sovereignty, while sovereignty can be defined in terms of the interactions and practices of states”.<sup>48</sup> Thus, sovereignty is an



institutionalized norm that is constructed by all independent states and shapes the identity of the state as ‘sovereign’; while at the same time, as shown above, the fundamental nature of sovereignty has changed its content across time and space because of the practices of states. In other words, the principle of the sovereignty game is invented by all independent states which are characterized by having a stable government ruling with supreme authority within a given territory and exercising control over a certain population. States acquire identity as ‘sovereign’ to act according to the norms of non-intervention and reciprocity in a social system that they construct. Also, the principle of non-intervention guarantees the security of states; in particular weaker states can survive without possessing powerful military capacities by mutual recognition from others, and in the meantime, forms world political order. Biersteker and Weber further demonstrated that “sovereignty provides the basis in international law for claims for state actions, and its violation is routinely invoked as a justification for the use of force in international relations. Sovereignty, therefore, is an inherently *social* concept”.<sup>49</sup> States interact within social relations between sovereign states based on social acts of recognition and mutual obligations between states.<sup>50</sup> Therefore, sovereignty is an institutionalized norm on the basis of intersubjective understandings and expectations. Georg Sørensen has assumed that there are two different kinds of rules in the sovereignty game: constitutive rules, which remain unchanged and regulative rules, which have changed in several ways.<sup>51</sup> The constitutive rules of sovereignty including the indispensable elements: territory, people, and government define the core features of what sovereignty is; while the regulative rules of sovereignty result from the interaction and practices of the antecedently existing entities that are sovereign states. The ongoing changing ideas about the meaning of sovereignty are supposed to relate to changes in sovereignty’s regulative rule. For example, international legal sovereignty is based on the practices associated with mutual recognition between juridical independent territorial entities; the rule is more sociological or cognitive perspective and perception than reality.<sup>52</sup>

Since the 1648 Peace Westphalia established the modern state system, it was a European game played within a European society of sovereign states. The Westphalian sovereignty asserted that “external authority structures should be excluded from the territory of a state; sovereign states are not only de jure independent, they are also de facto autonomous...Moreover, the government of a Westphalian sovereign can determine the character of its own domestic sovereignty, its own authoritative institutions.”<sup>53</sup> However, when the principle of sovereignty became a global norm as a result of colonial independence after 1945, Jackson demonstrated that the emergence of ‘quasi-states’ has shown their sovereignty is more juridical than empirical in the post-colonial game.<sup>54</sup> This movement has made it obvious the existence of a hierarchic relationship in the global system. As Georg Sørensen stated, “it is clear that the legal equality between modern and post-colonial states is not matched by substantial equality; post-colonial states are much weaker players”.<sup>55</sup> The new practices of intervention and sanction in weak or failed states in the post-Cold War period demonstrates that these states are unable to react against threats from the outside and are dependent upon the international community to provide the security guarantee of non-intervention. They are also used to alter the domestic political practices of weaker states to favor the stronger states, for instance, the United States’s coercive action insisting on changing the regime in Iraq. David A. Lake argued that “the norm of juridical or international legal sovereignty has taken such deep roots that it is unseemly or impolite to point out and talk about

hierarchies in contemporary international relations”; nevertheless, as we have seen, “hierarchy is still there, lying in the middle of the table”.<sup>56</sup> However, it is not anarchy in Hobbesian state of nature because it is normative conception that makes us know who the violator of the sovereignty game is.

As noted above, the regulative rules of the sovereignty game are dynamic contents and have changed over time. Biersteker and Weber pointed out “as the prescriptions for sovereign recognition change, so does the meaning of sovereignty”; the states as agents or identities are never “the product of any one institution or discourse, their meanings arise out of interaction with other states and with the international society they form”.<sup>57</sup> Furthermore, Alexander Wendt suggested that “regular practices produce mutually constituting sovereign identities (agents) and their associated institutional norms (structures)”.<sup>58</sup> Thus, states’ identity as sovereign is only meaningful when states recognize the rules and act on those norms, in the meantime interacting with other states within the international society they form. It has been proved by historical illustrations that the evolution and substantive meaning of sovereignty did change over time through states’ practices. Thanks to the contribution of the Fourteen Points by President Woodrow Wilson of the United States at the Paris Peace Conference in 1919 and subsequently documented in the Treaty of Versailles, the doctrine of popular sovereignty which demonstrated that nations have a right to self-determination and people are the holders of territorial sovereignty re-emerged in international recognition practice. At the same time, the issue of protection of religious and ethnic minorities was also regarded as a condition for international legal recognition, particularly in the Balkans region. However, it was not until the colonial independence movement around the 1960s that the principle of self-determination was practically applied in states’ practices.

In the post-Cold War period, new practices of humanitarian intervention in weak or failed states have violated norms of non-intervention and showed evidence that “sovereignty is no longer sacrosanct”<sup>59</sup>. Christian Reus-Smit asserted that the social identity of the state as sovereign possesses moral purposes to do rightful state action within societies of states.<sup>60</sup> And international understandings of what constitutes legitimate sovereignty have shifted from norms of territorial legitimation to human rights legitimation which concentrates on the relationship between the state and its individual citizens. Meanwhile, following the end of the Cold War the victory of the Western liberal democracy has made democratic values emerge in international normative structure. Although these new norms have been criticized as a form of cultural imperialism which imposes Western values on the international arena, J. Samuel Barkin argued that all international normative structures can be interpreted as having a strong culturally imperialist element in a broader historical view.<sup>61</sup> To sum up, the attached meanings to sovereignty vary according to the changing ideas. States’ practices in intervention, minority rights, human rights and democracy to secure recognition, international legal sovereignty have compromised Westphalian sovereignty.<sup>62</sup> For that reason, Krasner characterized the sovereignty game as ‘organized hypocrisy’.<sup>63</sup> Moreover, it seems that “the conception of legitimacy and sovereignty of the existing powerful states in international relations that become the international norm”,<sup>64</sup> as we shall see, since the establishment of the Westphalian system of sovereign states in Europe, recognition of new states has reflected the interests of the great European powers; and when the United States emerged as the dominant power after the Second World War, the practice of national self-determination in

decolonization has been supported from American values; as the changing configuration of power after the end of the Cold War, international discourse in liberal democracy and human rights regimes represents the ideas of the only superpower, the United States. Consequently, “the powerful are sometimes in a position to impose their ideas of legitimacy on the less powerful, and, therefore, it is the ideas of most powerful states that matter”.<sup>65</sup> As Wendt describes ‘anarchy is what states make of it’<sup>66</sup> and it is likely to say that ‘the rules of game’ is ‘what the states of great powers make of it’.

Since the concept of sovereignty is defined as “the absolute authority a state holds over a territory and people as well as independence internationally and recognition by other sovereign states as a sovereign state”;<sup>67</sup> therefore, authority, territory, population and recognition are important aspects of state sovereignty. As Biersteker and Weber contended that each component of state sovereignty is socially constructed,<sup>68</sup> we will look at each component respectively by analyzing the case of Kosovo’s pursuit of independence.

### **Kosovo: an autonomous province of Serbia or quasi-state?**

#### ***Authority***

Kosovar Albanians as a minority ethnic group were granted an autonomous province under the rule of 1974 Yugoslav Constitution by Josef Tito’s government until nationalist President Slobodan Milosevic revoked its status in 1989. Kosovar Albanians have responded to demand independence to secede from the FRY. The aggressive action against Serbian forces by the Kosovo Liberation Army (KLA) and ethnic cleansing against Kosovar Albanians by Serbian forces resulted in internal armed conflict in Kosovo between February 1998 and March 1999.<sup>69</sup> Considering mass human suffering in the Kosovo conflict and regardless of the veto of China and Russia in the UN Security Council in authorizing forcible action, NATO launched its bombing of Yugoslavia in March 1999 and ended the Kosovo war in June 1999. Since Serbian forces were driven out and replaced by the Kosovo Force (KFOR), NATO-led peacekeeping forces; Kosovo has been placed under the authority of United Nations Interim Administration in Kosovo (UNMIK) which is pursuant to the UN Security Council Resolution 1244 (UNSCR1244) on 10 June , 1999. UNSCR 1244 committed to preserve territorial integrity of the FRY; while at the same time beginning the long process of building peace, democracy, stability and self-government in Kosovo. UNMIK divides into “four pillars”:

Pillar I: Police and Justice, under the direct leadership of the United Nations.

Pillar II: Civil Administration, under the direct leadership of the United Nations.

Pillar III: Democratization and Institution Building, led by the Organization for Security and Co-operation in Europe (OSCE).

Pillar IV: Reconstruction and Economic Development, led by the European Union (EU).<sup>70</sup>

The head of UNMIK is the Special Representative of the Secretary-General (SRSG) for Kosovo and he is responsible for the work of the pillars and facilitates the political process to determine Kosovo’s future status. Mr. Joachim Rucker of Germany is current Special Representative and Head of the UNMIK since 1 September 2006. According to the new Constitutional Framework which was adopted in May 2001, responsibilities will be gradually transferred to Provisional

Institutions of Self-Government (PISG) which is located in Pristina, through parliamentary democracy, enhance democratic governance and respect for the rule of law. The PISG includes: (a) Assembly; (b) President of Kosovo; (c) Government; (d) Courts; and (e) Other bodies and institutions set forth in this Constitutional Framework. The President of Kosovo, elected by the Assembly, is responsible for the unity of the people and guarantees the democratic functioning of the Provisional Institutions of Self-Government. Mr. Ibrahim Rugova was the first post-war president until his death in January 2006; his successor is Mr. Fatmir Sejdiu. Article 1 (2) and 1 (4) of the Constitutional Framework separately state that “Kosovo is an undivided territory throughout which the Provisional Institutions of Self-Government shall exercise their responsibilities” and “Kosovo shall be governed democratically through legislative, executive, and judicial bodies and institutions in accordance with this Constitutional Framework and UNSCR 1244(1999)”.<sup>71</sup>

Kosovo is still legally a province of Serbia; however, political, economic and institutional operation under UNMIK has made Kosovo separate from the rest of the country.<sup>72</sup> The engagement of institution-building mechanisms by the international community seeks to establish the capability of self-government and restore the legitimacy of authority in Kosovo. But there exists an ambiguous authority relationship between the UN, PISG and the Serbian government. It is important to note that the Serbian government was never involved in the institution-building process in Kosovo. Also, the self-government in Kosovo created by UNMIK is a democratic political entity whose current state practices in constructing the authority of a government emphasize the will of the people as the final source of legitimacy for the state.

### ***Territory***

Kosovo was the centre of the Serbian empire and generally regarded as the ‘cradle of the Serbs’, a Serb heartland, in medieval times. Since the medieval Serbian empire was defeated at the great battle of Kosovo in 1389, the region was placed under the Muslim Ottoman Empire. Kosovo’s territory has been initially formed since under the Ottoman Empire’s rule. During the First Balkan War in 1912-3, Kosovo was mainly absorbed by Serbia again. After the Second World War, Serbia remained exercising authority within Kosovo’s territory until Kosovo was granted autonomous status and exercised complete control over its territory under Tito’s government. After the Kosovo conflict of 1999, Kosovo gained certain levels of self-governance under UNMIK and Serbia has had no authority over Kosovo’s territory since then. There are at least four controversial concepts of the nation as a right to territory in the Balkans region. The *historicist* principle demonstrates that a people who link their common identity claim to a nation have the right to govern their historical lands. Both Serbia and the Albanian population in Kosovo assume Kosovo as their historical lands reflected in this concept. The *democratic* principle states that all residents on a particular territory have the right to proceed by popular referendum to determine their state. The *Helsinki* (and UN) principle asserts that all existing borders which defines internationally recognized states are ‘inviolable’; while the *realist* principle claims to use military force to acquire physical control despite its illegitimate authority. As far as Kosovo’s territorial border is concerned, Susan L. Woodward suggested that it is probably to combine the Helsinki principle - Kosovo’s borders as a separate “federal unit” (a province, though not a republic) and grant international defense of internal borders, and the democratic principle of

self-determination by referendum. But in reality, the European position was ambiguous because the EU tended to accept the historicist principle that Kosovo was Serbian territory while at the same time conflicted with the realm of human rights of the Albanian position in Kosovo.<sup>73</sup>

Regarding the hostile disputes over borders between Belgrade and Pristina and the prohibition of “the threat or use of force against the territorial integrity or political independence of any state” under Article 2 (4) of the UN Charter, Korab R. Sejdiu has asserted the principle of *uti possidetis juris* which applied in South and Central America to resolve the former colonial border issues is inappropriate to Kosovo’s situation because Serbia still claims its territorial sovereignty over Kosovo. He suggested that it is probably appropriate to adopt the oldest principles of international law - *uti possidetis de facto* in this case since it “defines borders based on who possesses them after hostilities cease irrespective of the legal definition of former colonial borders, Kosovars are now in charge of Kosova’s territory and Serbs have no control therein”.<sup>74</sup> The UN system demonstrates that “territorial entities that have not achieved independence are entitled to claim the right to self-determination and achieve sovereign statehood”.<sup>75</sup> The Conference on Security and Cooperation (CSCE) developed the rights of persons as “collective rights” which belong to national minorities are allowed to “establish and maintain unimpeded contacts among themselves within their country as well as contacts across frontiers with citizens of other States with whom they share a common ethnic or national origin, cultural heritage, or religious beliefs.”<sup>76</sup> Slovenia, Croatia and Bosnia claimed the inalienable right to national self-determination to acquire sovereignty in the 1990s. They were republics of the SFRY based on territorial units to exercise self-determination and acquired boundaries according to the principle within context of decolonization which illustrated that “the former boundaries acquire the character of boundaries protected by international law”.<sup>77</sup> Their difference from decolonization was their declarations of independence within the context of the right to self-determination by an ethnic, religious, or linguistic group. In the case of Kosovo, the principle of self-determination might be applied in an ethnic-national group to express their individual human rights, but it is not the right to form a state, it is the right to claim political and cultural status, for example, operable levels of autonomy or self-governance within the boundaries of a state. Moreover, the dispute over boundaries between Kosovo and Serbia is that Kosovo is a province of Serbia while Slovenia, Croatia and Bosnia are constituent republics based on territorial jurisdiction.

### **Population**

According to the report on Kosovo in November 2007, the population of Kosovo approximately composed of 90% Albanians, 6% Serbs and 4% other minorities (incl. Bosniaks, Goranis, Roma, Ashkali, Egyptians, Turks).<sup>78</sup> Kosovo as the Albanian-inhabited region and “autonomous province” of the former Yugoslavia consists of a majority Muslim population which distinguishes it from Serbian populations, as the majority in Serbia is dominated by the Orthodox Church in a cultural and national-political dimension. The different roots, cultural and religious alignments, and regional varieties caused Serb-Albanian relations to enter into a series of bloody encounters in the historical record.<sup>79</sup> As a result of ethnic cleansing by the Serbian government, Kosovar Albanians claimed to be sovereign actor to guarantee their security.<sup>80</sup> The experience of ethnic oppression was reinforced to construct ethnic identity in Kosovo.

While a nation consists of “a named human population sharing a historical territory, common memories and myths of origin, a mass, standardized public culture, a common economy and territorial mobility, and common legal rights and duties for all members of the collectivity”;<sup>81</sup> ‘ethnic’ is regarded as “a group of people that share a distinct racial, national, religious, linguistic or cultural heritage, including shared history and perceptions, group identity and shared memory of past glories and traumas”.<sup>82</sup> Identities are shaped by shared experiences, memories and myths, and there is no identity without opposition to the identities of significant others. Hurst Hannum illustrated that the minority ethnic group might be driven to reinforce their own ethnic identity if the dominant ethnic group as majority in a state fail to treat them with non-discrimination and equality.<sup>83</sup>

Therefore, Oliver P. Richmond argued that “ethnic groups view sovereignty as providing their best prospects” and “the general logic is that in the contemporary international system, all sovereign actors are perceived to have greater levels of security than non-sovereign actors”.<sup>84</sup> He described that “states assume their claims to sovereignty are sacrosanct, seek to protect and promote their unity and cohesion, while ethnic groups seek to reproduce the logic of the national state to gain security, welfare, and legitimacy”.<sup>85</sup> Sovereignty comes to redefine their identity, security, territory and legitimacy, and as a result, ethnic sovereignty emerges. Ethnic cleansing in Kosovo by the Serbian government in 1999 showed that the state failed to provide security and protection for its peoples and thus made Kosovar Albanians strengthen the hope of acquiring international status. Kurt Mills argued that there is no distinct definition between a minority and a community which is entitled to self-determination. That minorities as distinct communities have a moral right to self-determination is perhaps based on political purposes. As one comment about Slobodan Milosevic in 1992 stated:

It’s all a tragic absurdity. In fighting for Serbs in Croatia, and now in Bosnia and Herzegovina, [he] says that all Serbs have the right to live in a single Serbian state. But here in Kosovo, where Albanians would like to claim that right for themselves, we are told that we are not a nation, we are a minority. It’s simply a matter of double standards.<sup>86</sup>

The UN Kosovo Standards Implementation Plan (KSIP) notes that the society created in Kosovo should be that all people can “participate fully in the economic, political and social life, [without] threats to their security [or] well-being based on ethnicity”, use their own language and “enjoy unimpeded access to public places and services”; in addition, persons in the refugees should be able to return home “in safety and dignity”.<sup>87</sup> It could be said that ethnic community provides an environment to practise the fulfillment of human rights and define various ‘selves’. As Moynihan illustrated that the “question of sorting out such values [democracy and human rights] in the context of ethnic group demands in which people define whom they love by whom they hate”.<sup>88</sup> However, Krasner mentioned that minority rights regimes and human rights regimes are likely to be inconsistent with the Westphalian model because they can be subject to external monitoring and even enforcement.<sup>89</sup>

## ***Recognition***

Kosovar Albanians regard the acquisition of sovereignty as locating their identity to gain security. Recent state practices in sovereign recognition focus on if a new state has territorial basis, a democratic government and respect human rights. The Copenhagen European Council in 1993 set up the Copenhagen criteria for Central and Eastern Europe which specified EU membership conditions: the fulfillment of stable institutions guaranteeing democracy, the rule of law, respect for and protection of minority and human rights, a functioning market economy and adopting the EU law and regulations known as the *acquis communautaire*.<sup>90</sup> Likewise, the preconditions for the United States to recognize former Soviet and Yugoslav republics were these new regimes and that states adopt democratic constitutions and legal protection for ethnic minorities.<sup>91</sup> Similarly, the Standards for Kosovo, agreed between PISG and UNMIK and approved by the UN Security Council, was launched on 10 December 2003, calling for Kosovo to follow functioning democratic institutions and have rule of law, freedom of movement, a functioning market economy, dialogue with Belgrade and the Kosovo Protection Corps operating within its agreed mandate and the law, and sustainable multi-ethnicity communities in which all individuals, regardless of ethnic background, can travel and work safely. These standards have reflected Kosovo's parallel progress towards European Standards in the framework of the EU's Stabilisation and Association Process based inter alia on the Copenhagen criteria. In November 2003, the UN Security Council regarded the implementation of these Standards as the precursor for any talks or negotiations about Kosovo's final status.<sup>92</sup>

International negotiations began in 2006 to determine the future status of Kosovo, whether it would become independent or remain part of Serbia. The process is led by UN Special Envoy Martti Ahtisaari, former President of Finland (1994-2000), and his office – the UN Office of the Special Envoy for Kosovo (UNOSEK) – is located in Vienna, Austria.<sup>93</sup> At the talks led by the UN mission in 2003, Kosovo President Ibrahim Rugova affirmed that “My country, Kosovo, wants to become a part of the European Union and NATO..... This means a democratic, peaceful and independent Kosovo”;<sup>94</sup> whereas Serbia has made it clear that Kosovo is a constituent part of the country and cannot allow the province to separate from Serbian territorial sovereignty. Serbian Prime Minister Volislav Kostunica commented in December 2006: “Serbia is much surer that its integrity will be preserved and that Kosovo will remain in Serbia, with an appropriate, substantial autonomy”.<sup>95</sup> On July 24, 2006, Ahtisaari held the first high-level meeting between a Belgrade delegation, led by Serbian President Boris Tadic and Prime Minister Volislav Kostunica and Pristina's Team of Unity, led by Kosovo President Fatmir Sejdiu and Prime Minister Agim Ceku to discuss Kosovo's future status in Vienna. However, there were no breakthroughs for Kosovo's future status and Ahtisaari commented: “it is evident that the positions of the parties remain far apart: Belgrade would agree to almost anything but independence, whereas Pristina would accept nothing but full independence.”<sup>96</sup> At the same time, Ahtisaari also meets regularly with representatives of the Contact Group, composed of the United States, United Kingdom, France, Germany, Italy, and Russia, that has managed Kosovo affairs since 1999. On September 20, 2006, Ahtisaari, together with Contact Group foreign ministers, the EU High Representative, the EU Presidency, and the European Commissioner for Enlargement, the NATO Secretary General and the UN SRSF for Kosovo met in New York to discuss the future status of Kosovo.



At that meeting, Ministers called for Kosovo's PISG and leaders of all of Kosovo's communities to accelerate the implementation of UN-endorsed Standards, promote reconciliation and develop trust among ethnic communities.<sup>97</sup> On 2 February 2007, Ahtisaari presented a draft status settlement proposal to Belgrade and Pristina, just after Serbia held parliamentary elections on 21 January, 2007. He stated that the proposal was the result of one year of intensive negotiations with the parties. "In the course of 2006, UNOSEK held 15 rounds of direct talks between Belgrade and Pristina negotiating teams, and our experts visited Belgrade and Pristina twenty six times to talk separately to the parties on various."<sup>98</sup> The Comprehensive Proposal for the Kosovo Status Settlement was officially delivered to the UN Security Council on 26 March; it recommended that "Kosovo's status should be independence, supervised by the international community". It also stressed that "Uncertainty over its future status has become a major obstacle to Kosovo's democratic development, accountability, economic recovery and inter-ethnic reconciliation" and "delaying resolution of Kosovo's status risks challenging not only its own stability but the peace and stability of the region as a whole."<sup>99</sup>

However, Serbian Prime Minister Vojislav Kostunica stated that the proposal was "unacceptable and illegitimate for Serbia" since Ahtisaari's proposal would redraw Serbia's internationally recognised borders and result in snatching away 15% of Serbia's territory and violate the principle of respect for sovereignty and territorial integrity of states, which is guaranteed by the UN Charter.<sup>100</sup> In the meantime, Russia indicated that a UN resolution paving the way for Kosovo's independence from Serbia would not get through the Security Council if it was unacceptable to Serbia.<sup>101</sup> Therefore, as a Statement issued on 20 July 2007, by Belgium, France, Germany, Italy, UK and the USA, co-sponsors of the draft resolution on Kosovo presented to the UNSC on 17 July, showed that "we regret, however, that it has been impossible to secure such a resolution in the UNSC".<sup>102</sup> The co-sponsors announced that further UN discussions on the matter may be within the Contact Group and with the parties. On 1 August, the Secretary-General's Statement on the New Period of Engagement on Kosovo showed that negotiations between Pristina and Belgrade would be held by a troika comprising representatives of the EU, the Russian Federation and the US, and the Contact Group would report back by 10 December.<sup>103</sup> Despite Serbian and Russian disapproval, western countries might eventually give Pristina a green light to bring independence by some unilateral steps on the basis of the Ahtisaari plan.<sup>104</sup> Considering long-term contributed troops and money of the Americans and other NATO members to Kosovo security in the KFOR mission and regional peace and security in the Balkans, the US, Britain and France tend to recognise Kosovar independence "under a novel system of EU-supervised sovereignty, no matter what Kosovo's ethnic Serb minority, Serbia, Greece, Russia and the UN may say"; hence, "counting on the trio's support, Kosovo's Prime Minister, Agim Ceku, insists independence is inevitable by the year's end".<sup>105</sup> There are at least twenty members of the EU likely to join the US to recognize a unilateral declaration of independence by the Kosovar Albanians around 10 December, the date when the troika of negotiators is due to submit their report to the UN.<sup>106</sup>



Although Serbs regard Kosovo as part of Serbia, Kosovo has been withdrawn from the control of the Serbian administrative and legal system since the end of the Kosovo War in June 1999. It seems difficult for Kosovar Albanians to agree to return under the authority of Serbia since they have experienced autonomous status, ethnic cleansing, the Kosovo War and self-government under UNMIK. Whether Kosovo can be granted international status and given the right to statehood may rely on its capacity to enter into relations with other states; but Kosovo's stance in diplomatic dimension demonstrates its limited capacity to defend itself, depending on UNMIK and KFOR administration. In his report on the future status of Kosovo to the UN Secretary-General on 26 March, Ahtisaari has mentioned:

While UNMIK has facilitated local institutions of self-government, it has not been able to develop a viable economy. Kosovo's uncertain political status has left it unable to access international financial institutions, fully integrate into the regional economy or attract the foreign capital it needs to invest in basic infrastructure and redress widespread poverty and unemployment. Unlike many of its western Balkans neighbours, Kosovo is also unable to participate effectively in any meaningful process towards the European Union... Kosovo's weak economy is, in short, a source of social and political instability, and its recovery cannot be achieved under the status quo of international administration.<sup>107</sup>

Another concern is Kosovo's capacity to deal with the protection of minorities. The inter-ethnic clashes between Serbian Kosovars and Albanian Kosovars in the town of Mitrovica in northern Kosovo in March 2004 led to widespread international condemnation. Serbian Prime Minister Vojislav Kostunica described the riots as examples of the violent and terrorist character of Albanian separatism and claimed that Kosovo Serbs should be given autonomy.<sup>108</sup> This event showed that Kosovo should make more effort to guarantee the security of minorities, Serbs. Otherwise, it might become another form of 'quasi-state'. Like many postcolonial states, their unreadiness to prepare to take on the burden of governing themselves resulted in their failure.<sup>109</sup> Moreover, although the legal criteria for external recognition of a state's legitimate domination has been through different changes over time, it is apparent that the idea of liberal democracy and human rights has dominated recognition practices in the twentieth century for a political entity which intends to declare independence to acquire international legal sovereignty. Also, the ongoing discourse among the international community on the future status of Kosovo reflects hierarchy as the nature of international society, in particular after the UN Special Envoy's plan failed to secure a Security Council resolution and led to the Contact Group, the six Great Powers, to dominate the process of negotiations. As Biersteker and Weber stated that "the ideal of state sovereignty is a product of the actions of powerful agents and the resistances to those actions by those located at the margins of power",<sup>110</sup> it is worth noting that the rule for international recognition is based on the ideas and values of the dominant great powers in international society.

## Conclusion

From constructivists' point of view, sovereignty as an institutionalized norm defines the social identities of the states as 'sovereign'; and because states interact with other states according to the norm of sovereignty, sovereignty is defined as the product of state practices; and the rules of the game in sovereignty change across time and space through state practices. Thus, sovereignty as a social and normative concept conditions the identity of the state. However, when ideas of agents change, the meaning attached to sovereignty varies according to the changing ideas; as a result, ideas shape state practices and lead to structural transformation. As the concept of sovereignty shows in the case of constructing Kosovo's pursuit of independence, the principle of non-intervention which the Westphalian sovereignty stressed has motivated Kosovar Albanians to be sovereign actors to guarantee their security. The principle of self-determination which emerged in the sovereignty game after 1945 and the institutional process under democratic principles by UNMIK and KFOR presents an opportunity for Kosovar Albanians to come out of the territorial boundaries of Serbia. However, with human rights as a new agenda emphasized in UN international law, Kosovar Albanians as a minority ethnic group might express their individual human rights by applying the principle of self-determination, but it is not the right to form a state, it is the right to claim political and cultural status. At present, the rights of a minority to self-determination conflicts with the principle of territorial integrity which is strengthened in the UN Charter. The right to ethnic self-determination as a basis for Kosovo Albanians to demand independence will violate territorial integrity of Serbia and result in changing existing borders of Serbia. Moreover, acquisition of sovereignty allows the state to enter into relations with other states. States act in the world by mutual recognition and at the same time, establish international order. The criteria for a state to be recognized by other political entities have reflected the interests of the great powers. Current state practices in sovereign recognition which have showed in the Standards for Kosovo are functioning democratic institutions, the rule of law, freedom of movement, a functioning market economy, and a human rights regime. The international community regards the implementation of these Standards as the precursor for any talks or negotiations about Kosovo's final status. The future status of Kosovo has invited the international community to engage in the negotiating process. After the proposal of supervised independence for Kosovo by the UN Special Envoy Martti Ahtisaari failed to secure a UN resolution, the talks on status settlements have returned to the six dominant great powers, the Contact Group. However, they still were unable to bring Belgrade and Pristina to any agreement by the deadline, 10 December 2007. Now, the negotiating positions and statements have been divided into two sides. As ethnic conflict may pose dangers to individual, state, regional and international security, for both humanitarian and security reasons, the US and its European allies tend to support a unilateral declaration of independence by the Kosovar Albanians. Consequently, it seems that the basic foundation of the Westphalian sovereignty – non-intervention – has given way to the effort that the international community makes to resolve ethnic conflict, avoid humanitarian disasters and maintain international order. Meanwhile, Russia insists that recognizing Kosovo's independence will violate the principle of territorial integrity which is enshrined in the UN Charter. Whether humanitarian and security concerns could compromise the rules of the sovereignty game is currently witnessed by the practice of the international community on the final status of Kosovo. Whether or not Kosovo will be granted independence, the negotiating process on its status settlements by the international community has demonstrated that the concept of state sovereignty is not static, fixed and absolute but socially constructed.

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